

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

ARAMARK UNIFORM SERVICES, INC.

Employer

and

Case 4–UC–411

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS LOCAL 773, AFL-CIO

Petitioner

**REGIONAL DIRECTOR’S DECISION, ORDER, AND  
CLARIFICATION OF BARGAINING UNIT**

The Employer, Aramark Uniform Services, rents uniforms, towels, and other items to its customers from various locations, including its facility in Bethlehem, Pennsylvania. The Petitioner, Teamsters Local 773, currently represents a unit of 10 Route Sales Representatives (RSRs) employed by the Employer at the Bethlehem facility.<sup>1</sup> The Petitioner filed a unit clarification petition with the National Labor Relations Board under Section 9(b) of the National Labor Relations Act seeking to include in the existing unit the newly-created position of warehouse employee.<sup>2</sup> The Employer contends that the unit should not be clarified as requested because the warehouse employee lacks a community of interest with the employees in the existing unit.

A Hearing Officer held a hearing in this matter.<sup>3</sup> I have considered the evidence and the arguments presented by the parties and, as discussed below, I have concluded that the unit should be clarified to include the warehouse employee. In this Decision, I will first present an overview of the Employer’s operations and then shall review the factors that must be evaluated to determine whether to grant the unit clarification petition. Thereafter, I will present in detail the relevant facts and analysis that support my conclusion.

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<sup>1</sup> The parties stipulated that the unit includes all “drivers, driver-salesmen, mechanics, utility employees, and working route supervisors.” The parties’ collective-bargaining agreement contains the same unit description with the addition of the phrase, “other employees employed in job classifications covered by this Agreement.” There are no utility employees or mechanics currently employed at the Bethlehem facility. In fact, the only employees currently in the unit are the RSRs.

<sup>2</sup> Although the petition lists the disputed classification as “warehouseman,” this decision will use the gender-neutral term “warehouse employee.”

<sup>3</sup> The parties did not file briefs.

## **I. OVERVIEW OF OPERATIONS**

The Bethlehem facility is a satellite of the Employer's Reading, Pennsylvania facility, which is located about 45 to 50 miles away. The Employer employs a District Manager, Route Sales Manager, Sales Support employee, RSRs, and a warehouse employee at the Bethlehem facility. Employees at the Reading facility clean and dry the items that the Employer rents to its customers, many of which are restaurants. The RSRs deliver the laundered items to the customers and bring their dirty laundry back to the Bethlehem facility.<sup>4</sup> This facility operates from about 5:30 a.m. until 8:30 p.m. and occupies about 12,000 square feet with seven loading docks.

In about January 2004,<sup>5</sup> the Employer acquired a significant amount of new business and decided to create the position of warehouse employee at the Bethlehem facility to speed the sorting process. In about April, the Employer hired a new employee, Carlos Castillo, to serve in this capacity. Castillo is the only unrepresented employee at this facility.

The extant collective-bargaining agreement between the Employer and the Petitioner, effective April 1, 2002 through March 31, 2006, does not mention the warehouse employee position. The Petitioner filed the petition in this case on October 13, 2004.

## **II. FACTORS RELEVANT TO DETERMINING WHETHER TO CLARIFY THE UNIT**

The Board will entertain unit clarification petitions to settle the question of whether employees in newly-created classifications should be placed in existing units. *Premcor, Inc.*, 333 NLRB 1365, 1366 (2001); *Bethlehem Steel Corp.*, 329 NLRB 241 (1999). The Board has followed a restrictive policy in finding accretions to existing units in order to preserve the right of employees to choose their own bargaining representative. *Archer Daniels Midland Co.*, 333 NLRB 673 (2001); *Towne Ford Sales*, 270 NLRB 311 (1984), *enfd.* 759 F.2d 1477 (9<sup>th</sup> Cir. 1985). Thus, in *Melbet Jewelry Co.*, 180 NLRB 107 (1969), the Board emphasized that it will not, under the guise of accretion, compel a group of employees to be included in an overall unit, "without allowing those employees the opportunity of expressing their preference in a secret election or by some other evidence that they wish to authorize the Union to represent them." The Board will not find an accretion when the employee group seeking accretion would constitute a separate appropriate bargaining unit. *Passavant Retirement and Health Center*, 313 NLRB 1216, 1218 (1994). Rather, the Board will permit accretion to promote labor relations stability only if new employees have such strong common interests with members of an existing bargaining unit that the new employees would have been included in the unit or covered by the contract. *United Parcel Service*, 303 NLRB 326, 327 (1991), *enfd.* 17 F.3d 1518 (D.C. Cir.

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<sup>4</sup> The RSRs are also referred to as "driver-salesmen," and "route sales drivers." The Reading RSRs are represented by another Teamsters local, and the Reading production employees are represented by a different labor organization.

<sup>5</sup> All dates are in 2004 unless otherwise indicated.

1994), cert. denied, 513 U.S. 1076 (1995). See also *Archer Daniels Midland Co.*, supra. When determining if new employees have a community of interest with employees of an existing bargaining unit, the Board considers: integration of operations; centralization of management and administrative control; geographical proximity; similarity of working conditions, skills, and functions; collective-bargaining history; and employee contact and interchange. *Archer Daniels Midland Co.*, supra. Of these, the two most important factors are employee interchange and common day-to-day supervision. *Id.* The Board has further held that a single facility unit geographically separate from other facilities is presumptively appropriate, even though a broader unit might also be appropriate. *Passavant Retirement and Health Care Center*, supra; *Manor Healthcare Corp.*, 285 NLRB 224, 225 (1987).

An accretion analysis is inapplicable where the new classification performs the same basic function that a unit classification historically had performed. In those cases, the new classification is viewed as remaining in the unit rather than being added to the unit by accretion. *Developmental Disabilities Institute, Inc.*, 334 NLRB 1166 (2001); *Premcor, Inc.*, supra.<sup>6</sup>

### **III. FACTS**

The RSRs work at various times between 6:00 a.m. and 8:30 p.m.<sup>7</sup> Each day they drive to customers' locations along specified routes, deliver laundered items, and return to the Employer's facility with dirty items.<sup>8</sup> The RSRs work primarily from their trucks. In addition to their driving and delivery functions, the RSRs are responsible for increasing the Employer's sales, both by selling additional services to existing customers and by obtaining new customers.

At the Bethlehem facility, the dirty items are removed from the RSRs' trucks, sorted, and placed in cages. A tractor-trailer driver then transports these cages to the Reading facility, where the items are washed, sorted, reloaded on the tractor-trailer, and returned to the Bethlehem facility. Some of the items return to Bethlehem unsorted, however, because they were not ready in time to be placed on the tractor-trailer. These items are called the "late line" and constitute about five to 10 percent of the total laundry at this location.

Castillo is the only warehouse employee employed by Employer. He works from 11:00 a.m. to 7:30 p.m., and his major responsibility is to ensure that the items are in the proper cages before they are sent to the Reading facility. In the morning, Castillo sorts the late line items that arrived from Reading. During the day, he also assists the RSRs in unloading their trucks and works alongside them sorting dirty laundry when they come into the facility from their routes. Castillo works only in the facility. When he is not at work, the RSRs perform his functions. Until the Employer created the warehouse employee position, the RSRs unloaded and sorted their own dirty items into cages.

RSRs are paid on a commission basis, with weekly minimum pay of \$550, as set out in the collective-bargaining agreement, and they earn an average of about \$45,000 a year. Castillo

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<sup>6</sup> See also *Tweddle Litho*, 337 NLRB 686 (2002).

<sup>7</sup> The record is not clear as to which hours the RSRs work within this time frame.

<sup>8</sup> The record does not indicate whether they return to the Employer's facility more than once a day.

earns about \$8.75 an hour. The RSRs' benefits are governed by the collective-bargaining agreement, while Castillo receives the same benefits as the Employer's non-union employees. The RSRs and Castillo all punch a time clock and wear the same uniform.

While the RSRs at times perform the warehouse employee's job, the warehouse employee is not qualified to perform the RSRs' duties. In this connection, the RSRs receive training specific to their sales responsibilities, and they must be certified by the United States Department of Transportation to drive a truck. They are required to have good communications skills and to pass a physical examination and a drug test. Castillo is not certified to drive a truck, does not need to take any examinations, and was not trained to perform sales functions.

District Manager Gregory Kearns is in charge of day-to-day operations at the Bethlehem facility. Route Manager Miles Hottenstein reports to Kearns. Kearns is Castillo's immediate supervisor, while Hottenstein is the immediate supervisor of the RSRs. If an RSR needs to call in sick, he calls Kearns. Because Castillo's English-speaking skills are limited, if he needs to call in sick, he calls an RSR who can communicate with him, Dennis Beddick, and Beddick then calls Kearns.

#### **IV. ANALYSIS**

I find that that the warehouse employee position should be included as an accretion to the existing unit because this classification shares a strong community of interest with the RSRs and because his exclusion would create a residual unit. The warehouse employee interacts regularly with the RSRs, working alongside them to help unload their trucks and sort the dirty laundry, and they perform his tasks when he is not at work. Although Castillo does not drive a truck, he plays an integral role in the preparation of the items that are transported by the trucks. Thus, there is a high degree of integration between the warehouse employee and the RSRs. In addition to significant integration, the warehouse employee shares supervision with the RSRs to some extent because he reports directly to Kearns while the RSRs report to him at the secondary level. The warehouse employee also wears the same uniform as the RSRs and punches a time clock.

The warehouse employee's extensive contact and functional integration with the RSRs, along with some common supervision, outweigh the factors militating against an accretion finding, i.e., the RSRs are paid on a commission basis, earn significantly more than the warehouse employee, and have specialized job training, communications skills, and certification requirements. The fact that the RSRs receive different benefits than the warehouse employee is of minimal significance because the RSRs are covered by the terms of the collective-bargaining agreement. Moreover, the Board has held that "[a] plant-wide unit is presumptively appropriate under the Act, and a community of interest inherently exists among such employees." *Airco, Inc.*, 273 NLRB 348, 349 (1984), citing *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 136 (1962); *E. H. Koester Bakery*, 136 NLRB 1006, 1011 (1962). The warehouse employee therefore shares a community of interest sufficient to be accreted into the existing unit. *Huckleberry Youth Programs*, 326 NLRB 1272, 1274 (1998).

In support of the conclusion that the warehouse employee should be accreted, it bears emphasis that if the warehouse employee were not included in the existing unit, he would be the only unrepresented employee at the Bethlehem facility. The Board has a longstanding policy of avoiding the creation of a residual unit, which would occur if the warehouse employee were excluded from the existing unit. *Huckleberry Youth Programs*, supra; *Airco, Inc.*, supra. This is particularly true in this case since the warehouse employee would be the sole unrepresented employee at the facility and as a single employee would be precluded from being in any unit. *Gateway Equipment Co.*, 303 NLRB 340, 342 (1991). In these circumstances, it is clear that the warehouse employee would have been included in the unit if his position had existed earlier. Cf. *United Parcel Service*, supra.

Alternatively, I find that the warehouse employee is performing work that has historically been performed by the bargaining unit and that the existing unit should therefore be clarified to include the newly-created classification on this basis. *Developmental Disabilities Institute*, 334 NLRB 1166 (2001); *Premcor, Inc.*, 333 NLRB 1365 (2001). Thus, Castillo's work of unloading and sorting dirty laundry was performed by the RSRs until the warehouse employee position was created. Indeed, the RSRs still perform this work to some extent, either with Castillo's assistance when he is available, or without him if he is not at work. Since the warehouse employee performs work previously performed by bargaining unit members, the new position may be "properly viewed as remaining in the unit rather than being added to the unit by accretion." *Premcor*, supra at 1366.<sup>9</sup> Although the warehouse employee performs only a portion of the duties previously performed by the RSRs, the Board has not required that the functions of the newly-created classification be entirely coextensive with the duties of members of the existing bargaining unit.<sup>10</sup>

I therefore find that that the warehouse employee classification should be included in the bargaining unit, and I shall grant the Petitioner's unit clarification petition.

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<sup>9</sup> The fact that the warehouse employee classification is not specifically mentioned in the collective-bargaining agreement distinguishes this case from *Tarmac America, Inc.*, 342 NLRB No. 107 (September 15, 2004).

<sup>10</sup> Thus, in *Developmental Disabilities, Inc.*, supra, the Board included the newly-created classification of therapy assistant in an existing unit of teachers and assistant teachers in a school for the developmentally disabled. The Board found that the therapy assistants fulfilled the "same basic educational function" as the bargaining unit members, although they provided one-on-one instruction to try to modify the behavior of severely disruptive children while existing bargaining unit members provided instruction to less disruptive children in a group setting.

In *Premcor*, supra, the Board found that members of the newly-created classification of process control clerk essentially performed bargaining unit work of monitoring and manipulating various elements of oil refinery units, although they performed this work in a very different manner than the existing unit employees, who were classified as operator 1. In this regard, the process control clerks used newer technology and could each monitor computerized consoles for six refinery units while operator 1s each monitored control boards for only two refinery units.

## **V. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization within the meaning of the Act.
4. The unit should be clarified as requested by the petition.

## **VI. ORDER**

**IT IS HEREBY ORDERED** that the petition is granted and the bargaining unit is clarified to include the warehouse employee classification.

## **VII. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Washington, D.C. 20570-0001. A request for review may also be submitted by E-mail. For details on how to file a request for review by E-mail, see <http://gpea.NLRB.gov/>. This request must be received by the Board in Washington by **December 23, 2004**.

Signed: December 9, 2004

at Philadelphia, PA

/s/ [Dorothy L. Moore-Duncan]  
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DOROTHY L. MOORE-DUNCAN  
Regional Director, Region Four